

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ARNIE GARCIA, JR.,

Plaintiff,

v.

O. HERRERA, et al.,

Defendants.

Case No. 1:25-cv-00094-JLT-HBK (PC)

ORDER TO SHOW CAUSE

AUGUST 8, 2025, DEADLINE

Plaintiff Arnie Garcia, Jr., a state prisoner, is proceeding on his pro se civil rights complaint filed under 42 U.S.C. § 1983. (Doc. No. 9) filed March 18, 2025. On May 19, 2025, the undersigned screened Plaintiff's Complaint and found it stated Eighth Amendment excessive force claims against Defendants O. Herrera and J. Gallardo and an Eighth Amendment failure to intervene claim against Defendant Valencia but fails to state any other cognizable claims. (Doc. No. 16). Plaintiff was given three options to exercise **no later than June 18, 2025**: (1) file a First Amended Complaint; (2) file a notice that he intends to stand on the Complaint as screened and proceed only on those claims the Court deems cognizable in the May 19, 2025 Screening Order; or (3) file a Notice stating he intends to stand on his Complaint subject to the undersigned recommending the district court dismiss certain claims and Defendants for the reasons stated in the May 19, 2025 Order. (*Id.* at 14-15). The Court expressly warned Plaintiff that if he "fails to timely respond to this Court Order or seek an extension of time to comply" the undersigned "will

1 recommend that the district court dismiss this case as a sanction for Plaintiff's failure to comply
 2 with a court order and prosecute this action." (*Id.* at 15, ¶2). The time period has well expired
 3 and Plaintiff has not elected any of the three options or otherwise moved for an extension of time.
 4 (*See generally* docket).

5 Federal Rule of Civil Procedure 41(b) permits courts to involuntarily dismiss an action
 6 when a litigant fails to prosecute an action or fails to comply with a court order. *See* Fed. R. Civ.
 7 P. 41(b); *see Applied Underwriters v. Lichtenegger*, 913 F.3d 884, 889 (9th Cir. 2019) (citations
 8 omitted); *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005)
 9 ("[T]he consensus among our sister circuits, with which we agree, is that courts may dismiss
 10 under Rule 41(b) *sua sponte*, at least under certain circumstances."). Local Rule 110 similarly
 11 permits courts to impose sanctions on a party who fails to comply with a court order.

12 Accordingly, it is hereby **ORDERED**:

13 **No later than August 8, 2025**, Plaintiff shall comply with the Court's May 19, 2025
 14 Order, or show cause why the Court should not recommend that this case be dismissed without
 15 prejudice for Plaintiff's failure to prosecute this action and/or his failure to timely comply with
 16 the Court's May 19, 2025 Order.¹

17
 18 Dated: July 24, 2025


 HELENA M. BARCH-KUCHTA
 UNITED STATES MAGISTRATE JUDGE

21
 22
 23
 24
 25
 26
 27 ¹ The Court notes that Plaintiff previously failed to timely comply with another Court order requiring the
 28 Court to recall its Findings and Recommendations to dismiss for Plaintiff's failure to prosecute. (See Doc.
 Nos. 11, 13, 15).